



IN REPLY REFER TO:  
FWS-2019-00545

# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

1011 E Tudor Road MS: IRTM  
Anchorage, AK 99503



July 31, 2019

Mr. Brad Hennessy  
Western Values Project  
407C East 13<sup>th</sup> Street, Suite 568  
Whitefish, Montana 59937

Dear Mr. Hennessy:

This is a partial response to your Freedom of Information Act (FOIA) request concerning the Arctic National Wildlife Refuge, dated September 28, 2018, in which your associate Mr. Chris Saeger requested the following:

*All officials in the office of the Alaska Regional Director, including [RD] Greg Siekaniec  
Natural Resource Specialist Hollis Twitchell*

*Keywords: "Arctic National Wildlife Refuge", "ANWR". "Environmental Management  
and Planning Solutions", "EMPSi", "Area 1002", "Section 1002", "ANWR-1002",  
"AMWR 1002"*

### Response

Per our phone call and email exchanges on July 23, 2019, we are providing you with records previously processed in response to two FOIA requests we are currently processing for the Defenders of Wildlife (DOW) as part of ongoing FOIA litigation. For this initial response we have enclosed 17 Portable Document Format (pdf) files consisting of approximately 5,631 pages and 1 Excel spreadsheet consisting of 85 pages and a folder of Geographical Information System (GIS) files.

From these pages, we have applied redactions to 283 pages pursuant Exemptions 5, 6 and/or 7. These redactions are identified in the documents and are described below. Please note, 111 of the pages marked for redaction contain information that is unresponsive to your request but may also be considered predecisional and deliberative. We have identified these redactions as both deliberative and nonresponsive. Additionally, more than one exemption may be applied to a single page.

We have withheld one document, consisting of 85 pages (see attachment on page 1018 of the pdf labeled, "18-00436-01159\_RECORDS\_ (Partial 5)\_Redacted\_6-27-19"). This document has

been withheld in full pursuant to the attorney-client privilege of Exemption 5. The redacted and full release material is provided to you on the enclosed DVD.

Lastly, we have referred 191 pages to the Bureau of Land Management for a release determination and direct reply to you, as described below.

### Exemptions

**Exemption 5:** Exemption 5 allows an agency to withhold “inter-agency or intra-agency memorandums or letters which would not be available by law to a party... in litigation with the agency.” 5 U.S.C. § 552(b)(5). Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges. In accordance with the privileges described below, we have redacted portions of the enclosed documents because they qualify to be withheld under one or more of the following privileges.

*Deliberative Process Privilege.* The deliberative process privilege protects the decision-making process of government agencies and encourages the frank exchange of ideas on legal or policy matters by ensuring agencies are not forced to operate in a fish bowl. A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) assure that subordinates will feel free to provide the decisionmaker with their uninhibited opinions and recommendations; (2) protect against premature disclosure of proposed policies; and (3) protect against confusing the issues and misleading the public. The deliberative process privilege protects materials that are both predecisional and deliberative. The privilege covers records that reflect the “give-and-take of the consultative process” and may include “recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.”

The materials that have been withheld under the deliberative process privilege of Exemption 5 are both predecisional and deliberative. They do not contain or represent formal or informal agency policies or decisions. They are the result of frank and open discussions among employees of the Department of the Interior. Their contents have been held confidential by all parties and public dissemination of this information would have a chilling effect on the agency’s deliberative processes; expose the agency’s decision-making process in such a way as to discourage candid discussion within the agency, and thereby undermine its ability to perform its mandated functions.” The deliberative process privilege does not apply to records created 25 years or more before the date on which the records were requested.

Please note, some of the documents we are releasing (i.e. draft documents outlining information needs, draft question and answer documents, and/or discussions among staff offering suggestions and/or discussing edits to documents and/or potential courses of action, etc.), technically meet the requirements to be withheld under the deliberative process privilege of FOIA Exemption 5 (5 U.S.C. § 552(b)(5)). After consulting with our legal counsel, and carefully considering the

parties involved, we believe there is no harm in releasing this information and no other exemptions apply, i.e. there are no institutional, commercial, and/or personal privacy interests at risk with the release of these documents. Therefore, we are exercising administrative discretion and releasing the documents to you in part or full. Please note, the Service does not waive its ability to invoke applicable FOIA exemptions for any arguably similar, but different information in future requests.

*Attorney-Client Privilege.* The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice and is not limited to the context of litigation. Moreover, although it fundamentally applies to confidential facts divulged by a client to his/her attorney, this privilege also encompasses any opinions given by an attorney to his/her client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect confidential client-supplied information.

The information that has been withheld under the attorney-client privilege of Exemption 5 constitutes confidential communications between agency attorneys and agency clients, related to legal matters for which the client sought professional legal assistance and services. It also encompasses opinions given by attorneys to their clients based on client-supplied facts. Additionally, the FWS employees who communicated with the attorneys regarding this information were clients of the attorneys at the time the information was generated and the attorneys were acting in their capacities as lawyers at the time they communicated legal advice. Finally, the FWS has held this information confidential and has not waived the attorney-client privilege.

*Government Commercial Information Privilege.* The information withheld under this privilege consists of active conference call telephone numbers. This information could be used to conduct conference calls by parties outside the government or used to call in to monitor internal government conversations. We are withholding it because disclosure to the public would chill communications between federal employees and harm the government's ability to exchange information. When the government enters the marketplace as an ordinary commercial buyer or seller, the government's information is protected under the commercial information privilege if it is sensitive information not otherwise available, and disclosure would significantly harm the government's monetary functions or commercial interests. The theory behind the privilege is that the government may be placed at a competitive disadvantage or the consummation of a contract may be endangered if confidential information generated by the government is disclosed.

**Exemption 6:** We have redacted portions of the enclosed documents pursuant to Exemption 6. Exemption 6 allows an agency to withhold "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6).

The phrase "similar files" covers any agency records containing information about a particular individual that can be identified as applying to that individual. To determine whether releasing

records containing information about a particular individual would constitute a clearly unwarranted invasion of personal privacy, we are required to balance the privacy interest that would be affected by disclosure against any public interest in the information.

Under the FOIA, the only relevant public interest to consider under the exemption is the extent to which the information sought would shed light on an agency's performance of its statutory duties or otherwise let citizens know what their government is up to. The burden is on the requester to establish that disclosure would serve the public interest. When the privacy interest at stake and the public interest in disclosure have been determined, the two competing interests must be weighed against one another to determine which is the greater result of disclosure: the harm to personal privacy or the benefit to the public. The purposes for which the request for information is made do not impact this balancing test, as a release of information requested under the FOIA constitutes a release to the general public.

We have redacted information consisting of personal cell phone numbers, home addresses, personal email addresses and/or other personal information. We have determined that the individuals to whom this information pertains have a substantial privacy interest. Additionally, you have not provided information that explains a relevant public interest under the FOIA in the disclosure of this personal information and we have determined that the disclosure of this information would shed little or no light on the performance of the agency's statutory duties. Because the harm to personal privacy is greater than whatever public interest may be served by disclosure, release of the information would constitute a clearly unwarranted invasion of the privacy of these individuals and we are withholding it under Exemption 6.

**Exemption 7:** Exemption 7 protects from disclosure "records or information compiled for law enforcement purposes" if the records fall within one or more of six specific bases for withholding set forth in subparts (a) through (f). 5 U.S.C. § 552(b)(7)(a)-(f). Pursuant to Exemption 7 subpart (C), we have redacted the names of Law Enforcement Officers. Exemption 7(C) protects law enforcement records if their release could reasonably be expected to constitute an unwarranted invasion of personal privacy. It is regularly applied to withhold references to individuals in law enforcement files. For the materials that have been withheld under 7(C), we have determined that releasing them would constitute an unwarranted invasion of privacy because they identify individuals referenced in law enforcement records and the release of this information would not shed light on an agency's performance of its statutory duties.

We reasonably foresee that disclosure would harm an interest protected by one or more of the nine exemptions to the FOIA's general rule of disclosure. This response to your request was prepared in consultation Attorney-Advisor Larry Mellinger.

### **Referral**

We have located 191 pages of records that originated in or substantially concern the U. S. Bureau of Land Management (BLM). These pages have been referred to BLM and they will issue a

response directly to you. You do not have to contact the BLM at this time, but should you need to in the future, you may do so at:

Heidi Wanner, FOIA Officer  
Alaska State Office, Bureau of Land Management  
222 W 7th Avenue #13  
Anchorage, Alaska 99513  
Email: [hwanner@blm.gov](mailto:hwanner@blm.gov)  
Phone: (907) 271-3559, Fax: (907) 271-3624

### **Mediation Services**

With respect to this response, you may seek dispute resolution services from our FOIA Public Liaison, Cathy Willis by phone at 720-425-5173; by email at [cathy\\_willisa@fws.gov](mailto:cathy_willisa@fws.gov); or by mail at U.S. Fish and Wildlife Service; Attention: Cathy Willis, FOIA Public Liaison; 5275 Leesburg Pike, Falls Church, VA 22041.

Additionally, the 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation and does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer. You may contact OGIS in any of the following ways. You may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road – OGIS, College Park, MD 20740-6001  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov), Web: <https://ogis.archives.gov>  
Telephone: 202-741-5770, Fax: 202-741-5769  
Toll-free: 1-877-684-6448

### **Appeal Rights**

You may also appeal this response to the Department's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal no later than 90 workdays from the date of this letter. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the FWS's response is in error. You must also include with your appeal copies of all correspondence between you and FWS concerning your FOIA request, including your original FOIA request and FWS's response. Failure to include with your appeal all correspondence

between you and FWS will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal. You may contact FOIA/Privacy Act Appeals Officer in any of the following ways:

DOI FOIA/Privacy Act Appeals Office  
Department of the Interior, Office of the Solicitor  
1849 C Street, N.W.  
MS-6556 MIB  
Washington, DC 20240  
Telephone: 202-208-5339  
Fax: 202-208-6677  
Email: FOIA.Appeals@sol.doi.gov

### **Conclusion**

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Fees associated with processing this request have been waived as described in our acknowledgment letter. Thank you for working with us. We will continue to provide you with rolling responses as they are produced. If you have any questions please contact me at 575-425-0033 or via email at fw7\_foia@fws.gov

Sincerely,

Government Information Specialist (FOIA)  
U.S. Fish and Wildlife Service

Enclosure (DVD)

cc: L. Bernhardt Attorney-Advisor, Office of the Solicitor  
L. Mellinger, Attorney-Advisor, Office of the Solicitor  
FWS FOIA Coordinator, Region 7, Alaska